

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today  
(1) was not written for publication in a law journal and  
(2) is not binding precedent of the Board.

Paper No. 25

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte MELVIN S. FREEDMAN  
and TIM PARKER

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Appeal No. 1997-1282  
Application 07/839,369<sup>1</sup>

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ON BRIEF

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Before PAK, OWENS, and DELMENDO, Administrative Patent Judges.  
PAK, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the examiner's final rejection of claims 17, 19 through 27 and 30 through 32, which are all of the claims pending in the application. Claims 1

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<sup>1</sup> Application for patent filed February 21, 1992.

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through 16 and 33 through 38 were canceled subsequent to the final Office action dated June 29, 1995.

The subject matter on appeal in this application is directed to methods involving manufacturing and labeling particular labels and recycling labeled articles. This appealed subject matter relates to the subject matter claimed in U.S. Application 08/439,414, Appeal No. 97-3611, which is directed to in-mold labeled articles. Claims 17 and 30, which are representative of the subject matter on appeal in this application, read as follows:

17. Combined labelling and recycling or reclaiming method including the steps of: forming layered film material containing within itself a separation interface and comprising a hot-stretched coextrudate of two polymeric film plies each formed in the absence of biaxial stretching and each comprising one or more film layers, said film plies being separably adhered to each other at said separation interface and one of them comprising printable in-mold label facestock including a printable face layer, said one of said film plies being further characterized by the absence of any ply-included layer of pressure-sensitive adhesive supporting said printable face layer, the other of said two film plies comprising a heat-activatable adhesive layer that is a contaminant-free recyclable material, printing the facestock with an ink or inks to decorate the same, die-cutting the film material to form individual labels, sequentially deploying the labels for heat activation of the adhesive and bonding onto successive substrates said printing, die-cutting, deploying, and bonding being carried out in the absence of forces at said separation interface sufficient to cause separation, and subsequent to said bonding of said labels to said substrate, imposing separation forces at said interface of said layered film

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material sufficient to cause interply separation whereby said printed facestock is separated for recycling of said substrate stock uncontaminated by said ink or inks.

30. A combined manufacturing and recycling or reclaiming method for labelling plastic substrates by bonding plastic labels thereto and then recycling the substrate stock without contamination by label inks, comprising the steps of providing multiple charges of film-forming resin, coextruding and hot-stretching said charges to thereby form a construction in the form of a multilayer coextrudate consisting of two plies each comprising one or more film layers without biaxial stretching of either ply, preselecting the charges and layers for the coextrusion step to provide two adjacent layers of different compositions each identified with its own one of said two plies and both together capable of (1) adhering to each other during label manufacture and application steps which include facial printing, die-cutting and affixation with heat of labels formed from said coextrudate to substrates, and (2) separating from each other when subjected to separation forces greater than those experienced during said label manufacture and bonding steps, and further selecting the charges and layers for the coextrusion step to provide within one of said film plies printable label facestock including a printable face layer in the absence of any ply-included layer of pressure-sensitive adhesive supporting said printable face layer, the other of said two film plies comprising a heat-activatable adhesive layer that is a contaminant-free material, providing substrates to be labelled and performing said label manufacture and bonding steps using said multilayer coextrudate whereby said labels are made and bonded to said substrates, and subsequent to said bonding, imposing said greater separation forces to separate the printed faces of said labels from the remaining portions of said labels and from said labelled substrates to thereby provide substrate stock uncontaminated by label inks, and remelting said uncontaminated substrate stock and forming new substrates therefrom.

According to page 5 of the specification, the hot-stretched coextruded label stock is described in U.S. Application

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07/756,556, now U.S. Patent 5,242,650 issued to Rackovan et al. on September 7, 1993 (hereinafter referred to as "Rackovan" (attached herewith)). According to column 4, lines 31-37, of Rackovan, the "hot-stretched" coextruded label film is formed by training an extrudate through a series of hot and cool rolls "which contact the extrudate to thereby impart heat to and remove heat from the extrudate under time-temperature-direction conditions established by line speed, roll temperature, roll size, and side of contact." This hot-stretched treatment allows the label film material to "avoid shrinking, relaxing or any distortion of the film which may interfere with the in-mold labelling process." See Rackovan, column 4, lines 14-37.

Claims 17, 19 through 27 and 30 through 32 stand rejected under 35 U.S.C. § 103 as unpatentable over the disclosure of U.S. Patent 4,837,088 issued to Freedman on June 6, 1989 (hereinafter referred to as "Freedman").

We have reviewed the claims, specification, and applied prior art, including all of the arguments and evidence advanced by the examiner and appellants in support of their respective positions. This review leads us to conclude that

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the examiner's § 103 rejection is not well founded.  
Accordingly, we will not sustain the examiner's § 103  
rejection for essentially those reasons set forth at pages 7-  
18 of the Brief. We add the following primarily for emphasis.

The examiner states (Answer, page 3) that:

Freedman discloses a label stock comprising a roll of layered film (see col. 3, lines 38-45) and further comprising a multilayered film having printable facestock and adhesive outer layers and joined by two polymeric films of a different composition constituting a peelable interface (see col. 2, line 55 and col. 3, line 37). The film plies adhere to a sufficiently high degree to withstand processing conditions required to make the film into labelstock. Freedman further discloses that the labels are used to label cans, bottles or boxes (see col. 4, lines 18-22). The two polymeric films are polyethylene and polypropylene (see col. 5, lines 48-59).

Recognizing that Freedman does not disclose the claimed heat-activatable adhesive layer, the examiner asserts (Answer, page 5) that:

Freedman states that the adhesive used may be a hot melt which is an adhesive flows due to heat. It is the Examiner's position [sic, that] the hot melt and heat activated [sic, adhesives] are equivalent.

The examiner's assertion, however, is not supported by any factual evidence.<sup>2</sup> The Freedman reference relied on by the examiner is directed to "a method and means for using pressure sensitive adhesive laminating technology." See column 1, lines 8-16. One of the pressure-sensitive adhesives employed may be a hot-melt material. See column 5, lines 60-61. Nowhere does the Freedman reference, however, teach or suggest that the pressure sensitive adhesive layers, including those made of a hot melt material, are equivalent to the claimed heat-activatable adhesive layers **for its labeling process**. Nor does Freedman indicate that the employment of the claimed heat-activatable adhesive layers is desirable or useful in the label of the type described in Freedman. Under this circumstance, we are constrained to agree with appellants that the examiner has not supplied sufficient evidence to demonstrate that it would have been obvious to use the claimed heat-activatable adhesive layers, in lieu of the pressure-

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<sup>2</sup> At page 4 of the Answer, the examiner similarly does not provide any evidence to support his assertions regarding dependent claim limitations involving shredding, classification and separation.

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sensitive adhesive layers, in the labeling process of Freedman.

Moreover, as argued by appellants at pages 9 and 12 of their Brief, Freedman also fails to disclose the claimed hot-stretched coextrudate of two polymeric film plies (one of which comprising a printable label face layer). See Freedman in its entirety. Nowhere does Freedman indicate that its **extrudate** is hot-stretched or includes a face stock (printable label face layer). See, e.g., column 2, lines 55-65 and column 3, lines 12-66, together with Figures 1A to 2D. In spite of this deficiency in Freedman as indicated by appellants, the examiner has not proffered any explanation, much less evidence, to demonstrate why the employment of such hot-stretched, coextruded polymeric film plies in the labeling making and using process of Freedman would have been obvious to one of ordinary skill in the art.

Thus, on this record, we conclude that the examiner has not established a **prima facie** case of obviousness regarding the claimed subject matter within the meaning of 35 U.S.C. § 103. Accordingly, we reverse the examiner's decision

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rejecting claims 17, 19 through 27 and 30 through 32 under 35 U.S.C. § 103 as unpatentable over Freedman.

OTHER ISSUE

U.S. Patent 5,242,650 issued to Rackovan on September 7, 1993 (filed September 9, 1991 (attached herewith)) is directed to an in-mold labeling process and in-mold labeled articles, wherein a label film having a face layer 12, a core layer 16 and a heat-activatable adhesive (base) layer 14 is coextruded and then hot-stretched to avoid shrinking, relaxing or any distortion of the film which may interfere with the in-mold labeling process. See Rackovan, column 4, lines 6-27, and column 5, line 11. Rackovan also refers to US. Patent 4,837,075 issued to Dudley on June 6, 1989 (attached herewith), which discloses an in-mold labeling process involving the use of polymeric label stock in the form of a multilayer coextrudate comprising a layer of heat-activatable adhesive. See Rackovan, column 3, lines 25-42. Although both Rackovan and Dudley do not appear to describe forming coextruded films having therebetween a peelable interface, Freedman does teach that the formation of such films having a



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peelable interface advantageously provides "renewable surfaces" for manufactured products as indicated *supra*.

Upon return of this application, the examiner should:

- (1) Determine whether Rackovan is qualified as "prior art" for purposes of 35 U.S.C. §§ 102 and 103; and
- (2) Determine whether Freedman taken together with Rackovan (if qualified as "prior art") and/or Dudley would have rendered the claimed subject matter obvious within the meaning of 35 U.S.C. § 103.

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CONCLUSION

In view of the foregoing, we reverse the examiner's § 103 rejection and return this application to the examiner to consider the above-mentioned references consistent with our instruction.

REVERSED

Chung K. Pak	)	
Administrative Patent Judge	)	
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	)	
	)	BOARD OF PATENT
Terry J. Owens	)	APPEALS AND
Administrative Patent Judge	)	INTERFERENCES
	)	
	)	
	)	
Romulo Delmendo	)	
Administrative Patent Judge	)	

CKP:tdl

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